FILED
JUL 1 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. ~~1137~~ 237

LAR DALY,

Petitioner;

vs.

UNITED STATES OF AMERICA,

Respondent,

and

FEDERAL COMMUNICATIONS COMMISSION,

Respondent-Intervenor.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ROBERT A. KAHN
134 South LaSalle Street
Chicago, Illinois
Attorney for Petitioner

The Scheffer Press Inc.—ANdover 3-6850

APPENDIX.

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION OCTOBER 31, 1956, AGAINST PLAINTIFF.

(Filed Dec 28 1956)

NATURE OF THE PROCEEDINGS.

Comes now Petitioner Lar Daly, by his attorney, who states that he is an American citizen, sui juris, and resident of the United States of America for the past 44 years consecutively; that his present residence address is 844 West Vermont Street, in the City of Chicago, County of Cook and State of Illinois; that he was born in the City of Gary, County of Lake and State of Indiana; and declares to this Honorable Court:

1. That on February 8, 1956, he was duly certified by the Illinois State Electoral Board, in Springfield, Illinois, as a legally qualified candidate for President of the United States to all Illinois County Clerks, and that as a result of such certification:

(a) Petitioner's name did appear on the Illinois Republican ballot as a candidate for President of the United States for the Illinois Primary Election of April 10, 1956.

(b) That, consequently, Petitioner was voted for by the Illinois electorate directly.

(c) That Petitioner on April 4, 1956, in an Informal Complaint, by letter, registered mail, addressed to George C. McConnaughey, Chairman, Federal Communications Commission, Washington, D.C., made known to the Federal Communications Commission the fact of his Illinois certification as a legally qualified candidate.

2. That on April 3, 1956, Petitioner was duly certified by the Indiana Secretary of State, in Indianapolis, Indiana, as a legally qualified candidate for President of the United States to all Indiana Circuit Court Clerks, and that as a result of such certification:

(a) Petitioner's name did appear on the Indiana Republican ballot as a candidate for President of the United States, for the Indiana Primary Election of May 8, 1956.

(b) That, consequently, Petitioner was voted for by the Indiana electorate directly.

(c) That Petitioner, on April 4, 1956, in the same aforementioned Informal Complaint, by letter, registered mail, addressed to George C. McConnaughey, Chairman, Federal Communications Commission, Washington, D.C., made known to the Federal Communications Commission the fact of his Indiana certification as a legally qualified candidate.

3. That on April 4, 1956, in the aforementioned Informal Complaint, Petitioner requested the Federal Communications Commission to declare him a legally qualified candidate within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, in view of Petitioner's having already been certified by the duly constituted authorities of the sovereign States of Illinois and Indiana, as a legally qualified candidate for President of the United States; and in view of Petitioner having complied with the provisions of the Rules and Regulations of the Federal Communications Commission defining the meaning of a legally qualified candidate, as contained in "Public Notice, FCC 54-1155 9105, of September 8, 1954, entitled "Use Of Broadcast Facilities By Candidates For Public Office."

4. That on April 11, 1956, the Federal Communications Commission, for reasons completely irrelevant and imma-

terial to the facts at issue, and despite knowledge of Petitioner's prior certification as a legally qualified candidate by the duly constituted authorities of the sovereign States of Illinois and Indiana, did illegally and unjustly refuse Petitioner's request of April 4, 1956, that they declare him a legally qualified candidate within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, and thus denied all the rights guaranteed by law to a legally qualified candidate according to said Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47.

5. (a) That on October 3, 1956, Petitioner, availing himself of the "Resubmission 6 months rule" of the Rules and Regulations of the Federal Communications Commission, did file with said Federal Communications Commission by letter, registered mail, a Formal Complaint addressed to Mary Jane Morris, Secretary, Federal Communications Commission, Washington, D.C., requesting that the Federal Communications Commission forthwith declare him as having been a legally qualified candidate for President of the United States from February 8, 1956 to August 22, 1956 inclusive.

(b) That in said Formal Complaint of October 3, 1956, Petitioner made known to the Federal Communications Commission the fact that on May 2, 1956, Petitioner had also been duly certified by the Montana Secretary of State, in Helena, Montana, as a legally qualified candidate for President of the United States to all Montana County Clerks, and that as a result of such certification:

(1) Petitioner's name did appear on the Montana Republican ballot as a candidate for President of the United States for the Montana Primary Election of June 5, 1956.

(2) That, consequently, Petitioner was voted for by the Montana electorate directly.

(c) That in his Formal Complaint of October 3, 1956, Petitioner submitted much additional material supporting his Informal Complaint of April 4, 1956, wherein Petitioner requested the Federal Communications Commission to declare him a legally qualified candidate.

(d) That in his Formal Complaint of October 3, 1956, Petitioner primarily and emphatically sought to impress upon the Federal Communications Commission the fact that it is an accepted principle of Federal Constitutional Law that the sovereign states of this American Union are supreme in all matters pertaining to elections within their various state borders.

(e) That only the duly constituted authorities of the various sovereign states can declare who is, and who is not, a legally qualified candidate within their state borders.

(f) That when the duly constituted authority of a sovereign state does declare and certify a citizen to be a legally qualified candidate, such decision is sufficient, absolute, final, and non-arguable, and must be accepted and complied with by all agencies and individuals.

6. That on October 31, 1956, despite factual knowledge of Petitioner's having been previously certified as a legally qualified candidate by the duly constituted authorities of the sovereign States of Illinois, Indiana and Montana, on February 8, April 3 and May 2, 1956, respectively; and despite knowledge of Petitioner having in his possession authenticated copies of his certification as a legally qualified candidate by the aforementioned three sovereign states; and citing reasons completely irrelevant and immaterial to the facts at issue, the Federal Communications Commission did again deny Petitioner's request that he be declared a legally qualified candidate from February 8, 1956 to August 22, 1956, inclusive, within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, and in conformity with the

Rules and Regulations of the Federal Communications Commission pertaining to the definition of what constitutes a legally qualified candidate.

VENUE

Venue before this Court is established as permitted by Sec. 3 of Public Law 901, under which this action is being taken.

GROUNDS FOR RELIEF.

This action is brought under Sec. 402(a) of the Communications Act of 1934, as amended, U.S. Code 47, under an Act of Congress known as Public Law 901, December 29, 1950 (H.R. 5487), 31st Congress (1950-51), 2d Session, contained in "United States Statutes at Large", Vol. 64, Part 1 (Chapter 1189), Page 1129.

PRAYER FOR RELIEF.

Now, therefore, Petitioner having been declared and duly certified as a legally qualified candidate by the sufficient and competent authorities of the sovereign states of Illinois, Indiana and Montana, prays of this Court for the following relief:

1. A Special Finding by the Court that Petitioner's certification as a legally qualified candidate by the States of Illinois, Indiana and Montana, constituted conclusive evidence of the ultimate facts established, and should have been the primary determination for the Federal Communications Commission to employ in considering Petitioner's requests of April 4, 1956 and October 3, 1956, that he be declared a legally qualified candidate by the Federal Communications Commission within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47.

2. A General Finding by the Court that Petitioner was a legally qualified candidate from February 8, 1956 to August 22, 1956, inclusive, within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47, as averred by Petitioner.

3. A Finding of Fact by the Court determining the validity of Petitioner's certification as a legally qualified candidate by the duly constituted authorities of the sovereign States of Illinois, Indiana and Montana, and therefore supportable in law and equity.

4. A Declaratory Judgment by this Court that the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner were unjustified and invalid in their entirety.

5. An Order, Ruling or Decree by this Court setting aside and suspending the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner; and directing the Federal Communications Commission to enter an order in accordance with the Declaratory Judgment of this Court.

Exhibits of Petitioner.

Petitioner attaches to this Petition for Review copies of the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner, as required by Sec. 4 of Public Law 901.

Petitioner attaches hereto photostatic copies of his certification as a legally qualified candidate, issued by the Illinois State Electoral Board, the Indiana Secretary of State, and the Montana Secretary of State, which are herewith incorporated and made a part of this Petition.

Respectfully submitted,

/s/ Lar Daly

Petitioner

Robert A. Kahn
Attorney for Appeliant
134 South La Salle Street
Chicago, Illinois
ANdover 3-2283

FEDERAL COMMUNICATIONS COMMISSION.
Washington 25, D.C.

April 11, 1956 In reply refer to 3000

Mr. Lar Daly
12022 South Halsted Street
Chicago 28, Illinois

Dear Sir:

This is with reference to your letter of April 2, 1956, in which you refer to the address made by the President on radio and television facilities on February 29, 1956, and request "equal opportunities" pursuant to Section 315 of the Communications Act of 1934 on the grounds that you are a "legally qualified candidate" for the nomination for President by the Republican Party. With your letter, you enclosed certain material which you felt supported your request. The Commission has communicated with the various networks concerning your request and has made certain independent inquiries with respect thereto.

As you know, Section 315(a) of the Act provides as follows:

> "(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed

upon any licensee to allow the use of its station by any such candidate."

From the above, it is clear that the provisions of Section 315(a) may be invoked only by a "person who is a legally qualified candidate" for public office. Where a question is raised concerning such qualifications, it is incumbent on the claimant to make a showing that he is a "legally qualified candidate".

The Commission has given careful consideration to your letter and to your enclosures. These documents indicate, among other things, that your statements and activities with respect to your candidacy are inconsistent; that although you qualified in Illinois to have your name on the ballot in that state's Republican Primary, you later advised the Illinois authorities that you were no longer a candidate; that although you admit taking such action, you later alleged that you did not really mean to withdraw; that while you claim that you are or will be qualified in states other than Illinois, in various ways including your stationery, you appear to support "Douglas MacArthur or U.S. Senator William E. Jenner of Indiana for President in 1956"; and that you apparently have also been bending your efforts toward obtaining the Republican nomination for Governor of Illinois. The above, and the other information contained in your letter and enclosures present an extremely confused picture as to whether or not you are, in fact, a candidate for the Republican nomination for President. Accordingly, the Commission is constrained to hold that you have failed to make an unequivocal showing sufficient to permit it to conclude that you are a "legally qualified candidate" within the meaning of Section 315(a) of the Communications Act.

By Direction of the Commission
(signed) George C. McConnaughey
George C. McConnaughey
Chairman

FEDERAL COMMUNICATIONS COMMISSION.
Washington 25, D.C.

October 31, 1956 37407

Mr. Lar Daly 8422
844 West Vermont Street .1000154
Chicago, Illinois

Dear Sir:

This is with reference to your "Complaint" filed on October 3, 1956 requesting the Commission to issue a "declaratory ruling" that you are a "legally qualified candidate" for the Republican Party nomination for President of the United States within the purview of Section 315 of the Communications Act of 1934, as amended, and to order the American Broadcasting Company, Columbia Broadcasting System, Inc., Mutual Broadcasting System, Inc., and the National Broadcasting Company to afford you the use of their facilities equal to that afforded to Dwight D. Eisenhower from February 29, 1956 to August 22, 1956, inclusive. Objections to your request have been filed by the four networks.

Commission records indicate that in a letter to the Commission dated April 2, 1956 you referred to the address made by President Eisenhower on February 29, 1956 over the facilities of the above-mentioned networks and stated, in substance, that you requested "equal opportunities" pursuant to the provisions of Section 315 of the Communications Act on the ground that you were a "legally qualified candidate" for the nomination for President by the Republican Party, and that said requests were refused. In its letter to you dated April 11, 1956, the Commission pointed out that the provisions of Section 315(a) of the Act may be invoked only by a "person who is a legally qualified candidate" for public office; and that where a question is raised concerning such qualifications, it is in-

cumbent on the claimant to make an unequivocal showing that he is a "legally qualified candidate." The Commission advised you that you had failed to make such a showing sufficient to permit it to conclude that you were a "legally qualified candidate" within the meaning of Section 315(a) of the Act. It further appears that in a telegram dated April 14, 1956 you requested the Commission to reconsider its action of April 11, 1956 and to grant you a "personal rehearing." By telegram dated May 3, 1956, the Commission advised you that, as a general policy, it does not ordinarily hold hearings on requests for "equal opportunities" under Section 315; and that you had submitted no new facts which would warrant the Commission to reconsider its action of April 11, 1956, or to deviate from said policy. You neither appealed from that action nor did you, at any time up to the date of your present compiaint, offer to the Commission any further showing of your candidacy.

In substance, you request a ruling that you are a legally qualified candidate for the Republican nomination for President and your prayer is that the Commission order the defendant networks to afford you the use of their facilities equivalent to that afforded Dwight D. Eisenhower in all instances beginning with the date of February 29, 1956, and including all such use afforded President Eisenhower up to and including the date of August 22, 1956. Your request is based upon allegations that you have in your possession authenticated documents from the Secretaries of State of Illinois, Indiana and Montana, certifying that you were a legally qualified candidate for the Republican presidential nomination; that you have evidence to show that you were officially recognized as such a candidate by the Republican National Committee; and that you actively solicited support of delegates to the 1956 Republican Convention. Your request is based also upon your

view that Section 315(a) of the Communications Act of 1934 is without limit as to time, that is, that you as a candidate for the Republican nomination have a right to use broadcast facilities after August 22, 1956, the date on which the Republican Convention chose Dwight D. Eisenhower as its nominee. You further state that your complaint is filed under Title II of the Communications Act of 1934, as amended.

At the outset, it should be pointed out that Title II of the Act has no application to your complaint inasmuch as said Title relates to common carriers, and a broadcast station is not a common carrier under Section 3(h) of the Act, which provides that ". . . a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier."

With respect to the "new material", which your instant complaint states that you have in your possession to show that you are a legally qualified candidate for the nomination for President by the Republican Party, it is pointed out that such material was not before the Commission for its consideration at the time you first complained of the action of the networks in refusing to grant you "equal opportunities" in the use of their facilities. Accordingly, it would be academic to determine at this time whether, if the Commission had had before it in April, 1956, the evidence you allege you now have, it could have concluded that you were then a legally qualified candidate for the nomination of the Republican Party for President. Moreover, while, at any time substantially in advance of the August 22, 1956 nomination, we could have considered any valid claim for equal time which you might have presented, we cannot at this late date reconsider our April 11, 1956, denial of your request.

As you know, on August 22, 1956 Dwight D. Eisenhower was nominated as the candidate of the Republican Party

for President of the United States. Since no contest presently exists for said nomination, it is clear that you cannot be considered as a competing candidate for that office so as to entitle you to the "equal opportunities" available prior to the Republican Convention. While we do not suggest that there is no post election remedy available against broadcasters who may have violated the provision of Section 315, in our opinion a broadcast licensee may not be required to furnish use of facilities to a candidate for nomination after the nominating convention has chosen its nominee. Neither could a licensee satisfy the requirements of 315(a) by offering time after the nomination, for the event of nomination terminates the possibility of affording equal opportunity.

In light of the foregoing considerations, no basis exists for granting the relief sought in your complaint. Accordingly, your requests are denied.

By Direction of the Commission
(signed) Mary Jane Morris
Mary Jane Morris
Secretary

cc: Robert A. Kahn
National Broadcasting Company
Columbia Broadcasting System, Inc.
Mutual Broadcasting System, Inc.
American Broadcasting Company

DEPARTMENT OF THE SECRETARY OF STATE
of the State of Montana

Certificate

United States of America }
State of Montana } ss.

I, S. C. Arnold, the duly appointed, qualified and acting Secretary of State of the State of Montana, do hereby

certify that the attached six sheets contain a true, complete and correct list of the names of those persons legally filed and entitled to appear on the ballot for the offices thereon set forth to be voted upon at the Primary Election to be held in the First Congressional District in the State of Montana on the fifth day of June, A. D. 1956; and I further certify that the names of said candidates are arranged according to law as they should appear upon said ballot.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Montana to be affixed, at Helena, the capital, this second day of May, A. D. 1956.

(Great Seal of the State of Montana)

S. C. Arnold
Secretary of State
By Clifford L. Walker
Deputy

REPUBLICAN PARTY
FF.

CANDIDATES FOR PRESIDENT
(Vote for One)

S. C. ARNOLD
LAR DALY

FOR REPRESENTATIVE IN CONGRESS
FIRST CONGRESSIONAL DISTRICT
(Vote for One)

M. S. GALASSO
W. D. (BILL) McDONALD
RUTH GREENOUGH MOSBY
LOUIS WELCH

FOR GOVERNOR
(Vote for One)

J. HUGO ARONSON

FOR LIEUTENANT GOVERNOR
(Vote for One)
GEORGE M. GOSMAN

FOR SECRETARY OF STATE
(Vote for One)
EDNA J. HINMAN

FOR ATTORNEY GENERAL
(Vote for One)
J. JUSTIN BOURQUIN
MICHAEL J. O'CONNELL

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE
Secretary of State

To Whom These Presents Come, Greeting:
To the Clerks of the Circuit Courts of the State of Indiana:

I, Crawford F. Parker, Secretary of State of the State of Indiana, hereby certify that the following named persons have filed their declarations of candidacy as required by law for the office of President of the United States of America, and are entitled to be voted for at the Primary Election to be held May 8, 1956.

REPUBLICAN	DEMOCRAT
LAR DALY Chicago, Illinois	ESTES KEFAUVER Chattanogga, Tennessee
DWIGHT D. EISENHOWER Gettysburg, Pennsylvania	

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this 3rd day of April, 1956.

/s/ Crawford F. Parker
Crawford F. Parker
Secretary of State.

(Seal)

Certificate Number 18089

STATE OF ILLINOIS
OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, Charles F. Carpentier, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of a duplicate, unsigned, of one of the Primary Election Certificates, the original being certified to the County Clerk of Cook County by the State Electoral Board under date of February 8, 1956.

copy of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 18th day of July, A.D. 1956.

/s/ Charles F. Carpentier
Secretary of State

(Seal)

PRIMARY ELECTION CERTIFICATE
First Senatorial District

United States of America }
State of Illinois } ss.

Office of the Secretary of State

To the County Clerk of Cook County:

We, the undersigned, Members of the State Electoral Board, pursuant to law in such case made and provided, do hereby certify that the following is a true and correct list, as shown by petitions now on file in the office of Charles F. Carpentier, Secretary of State of the State of Illinois, of the names and political affiliations of all candidates for nomination and election for the following offices,

and of candidates for President of the United States for expression of preference to be voted for at the Primary Election to be held on the 10th day of April, A. D. 1956, in the First Senatorial District, in the County of Cook.

REPUBLICAN PARTY

FOR PRESIDENT OF THE UNITED STATES:

DWIGHT D. EISENHOWER
WILLIAM F. KNOWLAND
LAR (AMERICA FIRST) DALY

FOR UNITED STATES SENATOR:

EVERETT MCKINLEY DIRKSEN

FOR GOVERNOR:

LAR (AMERICA FIRST) DALY
ANTHONY A. POLLEY
WILLIAM G. STRATTON
SIDNEY MCKEE WARD
WARREN E. WRIGHT

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Lar Daly, Petitioner, v. United States of America and Federal Communications Commission, Respondents.	Civil Action No. 11946

MOTION TO DISMISS.
(Filed Feb 23 1957)

The United States of America and the Federal Communications Commission, respondents herein, respectfully move this Court that the Petition for Review be dismissed

on the grounds that petitioner has alleged no justiciable case or controversy and the case is accordingly moot.

STATEMENT

This is a petition for review of a letter of the Federal Communications Commission (the Commission) dated October 31, 1956 denying a request by petitioner of October 3, 1956 for a ruling that he was a legally qualified candidate for the Republican Party nomination for President of the United States under Section 315 of the Communications Act of 1934, as amended, 47 U.S.C. 315 and, as such, entitled to use of the broadcasting facilities of certain networks equal to that afforded Dwight D. Eisenhower prior to the Republican Party convention preceding the 1956 presidential election. The relevant facts are as follows:

On April 2, 1956, Lar Daly (petitioner) wrote to the Commission (R. 1-5)[1] referring to an address made by President Eisenhower on February 29, 1956 over the network facilities of the American Broadcasting Company, Inc., Mutual Broadcasting System, Inc., and National Broadcasting Company, and stating that he was entitled to equal opportunity, pursuant to Section 315 of the Communications Act of 1934, as amended,[2] as a legally quali-

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[1] References to "R." are to the record filed with this Court.

[2] Section 315 of the Communications Act, as amended, provides:

"(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: **Provided,** that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section."

fied candidate for the nomination for President of the United States by the Republican Party, to use their facilities. He alleged that the broadcasting companies had refused his requests for such equal broadcast time.

The Commission communicated with the networks (R. 86-89) requesting comments on their alleged refusal. The networks stated in reply that petitioner had failed to show he was a legally qualified candidate. (R. 101-110 A, 112-117, 121-128). The Commission also communicated with the several Secretaries of State (R. 93-96) and received their replies (R. 97, 98, 111). On April 11, 1956, the Commission advised petitioner (R. 112-117) that the provisions of Section 315 of the Act may be invoked only by a "person who is a legally qualified candidate" for public office; that when a question was raised concerning such qualification, it was incumbent upon the claimant to make a showing that he was a legally qualified candidate; and that

> "The Commission has given careful consideration to your letter and to your enclosures. These documents indicate, among other things, that your statements and activities with respect to your candidacy are inconsistent; that although you qualified in Illinois to have your name on the ballot in that state's Republican Primary, you later advised the Illinois authorities that you were no longer a candidate; that although you admit taking such action, you later alleged that you did not really mean to withdraw; that while you claim that you are or will be qualified in states other than Illinois, in various ways including your stationery, you appear to support "Douglas MacArthur or U.S. Senator William E. Jenner of Indiana for President in 1956"; and that you apparently have also been bending your efforts toward obtaining the Republican nomination for Governor of Illinois. The

above, and the other information contained in your letter and enclosures present an extremely confused picture as to whether or not you, in fact, are a candidate for the Republican nomination for President. Accordingly, the Commission is constrained to hold that you have failed to make an unequivocal showing sufficient to permit it to conclude that you are a "legally qualified candidate" within the meaning of Section 315(a) of the Communications Act."

On April 14, 1956, petitioner telegraphed a request for reconsideration of the action of April 11, 1956 (R. 129). On May 3, 1956, the Commission replied by telegram denying reconsideration and further hearing (R. 142). No judicial review of the Commission's April 11, 1956 and May 3, 1956 actions were sought by petitioner.

On August 14, 1956, the Honorable John P. Barnes, Chief Judge of the United States District Court, Northern District of Illinois, Eastern Division, dismissed a complaint filed by petitioner in that Court seeking declaratory judgment of his rights under Section 315 of the Act against the same networks. (Case No. 56 C 1193.) The principal ground of dismissal was that Mr. Daly had failed to exhaust his proper remedies. Neither the United States of America nor the Federal Communications Commission was a party to this action.

On October 3, 1956, petitioner filed a "complaint" (R. 145-162) again requesting a ruling by the Commission that he was a legally qualified candidate for the Republican nomination for President of the United States, and seeking to have the Commission order the networks to afford him the use of their facilities equivalent to that afforded Dwight D. Eisenhower between February 29, 1956 and August 22, 1956. This complaint was based upon allegations that the petitioner had in his possession authenticated documents from the Secretaries of the States of

Illinois, Indiana and Montana, certifying that he was a legally qualified candidate for the Republican presidential nomination; that he was officially recognized as a candidate by the Republican National Committee; that he actually solicited support of delegates to the 1956 Republican convention; and that since Section 315 of the Communications Act is without limitation as to time, he had a right to use broadcast facilities even after August 22, 1956, the date on which the Republican Convention chose Dwight D. Eisenhower as its nominee.

On October 5, 1956, the Commission communicated the contents of the complaint to the networks asking for their comments (R. 163-166). Replies were received (R. 167-168, 169-175; 176-177, 178-179) asserting that the question became moot with the nomination of President Eisenhower on August 22, 1956, and that the matter has been resolved by both the Commission and the United States District Court.

On October 31, 1956, the Commission advised petitioner that since the Republican Convention had, on August 22, 1956, nominated Dwight D. Eisenhower as the candidate of the Republican Party for President of the United States, no contest was then existing for said nomination, and that it could not then consider him as a competing candidate for that office so as to entitle him to "equal opportunities." (R. 184-186). It was also pointed out that any "new material" which petitioner might have in his possession had not been previously submitted to the Commission for its consideration. The Commission further stated that a broadcast licensee would not be required to furnish use of facilities to a candidate for nomination after the nomination convention had chosen its nominee.

Argument.

The petitioner asks the Court to review the Commission's ruling of October 31, 1956 that petitioner could not

be afforded equal time as a candidate for the Republican nomination for President of the United States because the nomination convention in connection with which petitioner wanted "equal time" had long since been concluded. The petition for review must be dismissed because there is no justiciable case or controversy and the case is accordingly moot.[3]

The relief petitioner sought from the Commission was a ruling that he was a legally qualified candidate and an order to the networks "to afford him the use of their facilities, the same as that afforded Dwight D. Eisenhower in all instances beginning with the date of February 29, 1956, and including all such use of defendants' facilities afforded Dwight D. Eisenhower, up to and including the date of August 22, 1956". (R. 161) We believe it clear that the controversy sought to be raised by the petition for review is moot, and petitioner in seeking review of the Commission's rulings of October 31, 1956, and of his status as a candidate for nomination as Republican candidate for President prior to August 22, 1956, is merely

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[3] Although the petition also asks that the Commission's ruling of April 11, 1956 be set aside as invalid, the time to seek review of this ruling has clearly long since expired. Section 402(a) of the Communications Act, 47 U.S.C. 402(a), under which the present action has been brought, provides for review of orders of the Commission other than those specified in Section 402(b) (which is not pertinent here) in accordance with the provisions of Public Law 901, Eighty-first Congress, approved December 29, 1950, Public Law 901, 5 U.S.C. 1031, et seq., provides in Section 4 (5 U.S.C. 1034) that a petition for review may be filed within 60 days after entry of the order sought to be reviewed. The present petition for review was filed on December 28, 1956.

The October 3, 1956 complaint could not have been considered as a second request for reconsideration of the earlier ruling because it was not filed within 30 days of the Commission's refusal on May 3, 1956, to reconsider its April 11, 1956 opinion. See Communications Act, Section 405, 47 U.S.C. 405.

seeking an advisory opinion upon an abstract question of law.[4]

Petitioner's demand for equal broadcast time to that given President Eisenhower prior to the Republican Convention cannot now, and could not in October 1956, be afforded him. Since the convention ended on August 22, 1956, equal use of broadcast facilities among legally qualified candidates for the Republican nomination for President of the United States, even assuming that such equal use was required but not afforded prior to the time the contest for this nomination ceased to exist, is and was then impossible of achievement. Section 315 accords equal time only to candidates, and petitioner was admittedly not a candidate for nomination after the convention had made its selection. Moreover, his possible previous status as a candidate can have no bearing upon any future contests which he may choose to enter. Therefore, the demand for equal time being necessarily the gravamen of petitioner's petition for review of any Commission action, the controversy is moot and the petition must be dismissed. See City of Atlanta, Ga. v. National Bituminous Coal Commission, 69 App. D.C. 115, 99 F.2d 348; Evans v. Federal Communications Commission, 72 App. D.C. 159, 113 F.2d 166.

While petitioner might have brought his alleged new material to the Commission prior to the convention, or sought review of the Commission's first rulings at that time, he did not do so. Instead, he brought an original action against the radio and television networks in the

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[4] To the extent that the petition for review can be viewed as a request for a declaratory ruling, it must fail since, for the reasons given in the text, there is no actual controversy presently in existence. See **Maryland Casualty Co. v. Pacific Coal & Oil Co.**, 312 U.S. 270; **Selected Products Corp. v. Humphreys et al.**, 86 F. 2d 821 (C.A.); **Stone v. Christensen**, 36 F. Supp 739 (D.C. Oregon).

District Court (see statement, supra, p. 3), and later, after the convention was over, again sought to have the Commission require the networks to afford him broadcast time. Therefore, not only did the Commission correctly hold that it could not give petitioner the relief he requested in his October 3, 1956 complaint because it was moot, but, for the same reason the present appeal is also moot.

For, the foregoing reasons, the petition for review should be dismissed.

Respectfully submitted,

/s/ Daniel F. Friedman
Daniel M. Friedman
Attorney, Department of Justice
Counsel for United States of America

/s/ Warren E. Baker
Warren E. Baker
General Counsel

/s/ Richard A. Solomon
Richard A. Solomon
Assistant General Counsel

/s/ Daniel R. Ohlbaum
Daniel R. Ohlbaum
Counsel

/s/ Richard J. Tarrant
Richard J. Tarrant
Counsel
Federal Communications Commission

February 21, 1957

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Lar Daly, Plaintiff
vs.
United States of America, Defendant
No. 11946

EMERGENCY MOTION TO CORRECT OMISSION IN RECORD AND MISSTATEMENT IN INDEX TO RECORD SUPPLIED BY FEDERAL COMMUNICATIONS COMMISSION, INTERVENOR.

(Filed Feb 25 1957)

Comes now, Petitioner, Lar Daly, by his attorney, pursuant to Rule 22(d) of the Rules of this Court, and states the following:

1. That Page 95 of the Record, as filed with the Clerk of the Court by the Federal Communications Commission, is missing from said Record, even though the Index to Record, Page 4, states that Page 95 is contained in the Record by the following words:
   Item No. 12—
   Telegram, Indiana Secretary of State—Page 95 to FCC, stating that name of Lar Daly would appear on official primary ballot, dated April 6, 1956.
2. That Page 1, Item 2, Sub-item 6 of the Index to Record contains a misstatement on line 2 by reading, "Lar Daly for Senator and President in Illinois", when it should correctly read, "Lar Daly for Governor and President in Illinois". Page 16 of the Record, pertaining to above misstatement in the Index to Record, and which is a photostatic copy from the Office of the Secretary of State of Illinois, correctly shows a receipt given to Lar Daly, for a Primary Petition, filed

in his behalf, for the Office of Governor of Illinois, on the Republican ticket, for the Primary Election of April 10, 1956.

Petitioner asks that the Court direct the Federal Communications Commission to file, with the Clerk of this Court, said omission in Record and correct said misstatement in the Index to Record, forthwith.

Respectfully submitted,
/s/ Robert A. Kahn
Attorney for Plaintiff

Robert A. Kahn
134 South La Salle Street
Chicago, Illinois
ANdover 3-2283

IN THE
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Lar Daly, Petitioner, United States of America and Federal Communications Commission, Respondents.	Civil Action No. 11946

ANSWER OF LAR DALY, PETITIONER, TO MOTION TO DISMISS.
(Filed Mar 4 - 1957)

Now comes Lar Daly, Petitioner, by his counsel Robert A. Kahn, and files this his Answer to the Motion to Dismiss heretofore filed by the United States of America and the Federal Communications Commission, respondents and intervenors.

1. The reference to the record in said motion on page 2 thereof refers to pages 97, 98 and 111 of the record in this Court to substantiate an allegation of said motion

that the Petitioner was not a legally qualified candidate for President of the United States. However, they have omitted referring to page 95 of the record filed in this Court, in which the Secretary of State of the State of Indiana sent a telegram to the Federal Communications Commission on April 6th, 1956: "Lar Daly has filed his declaration as a Republican Candidate for President of the United States., his name will appear on the official ballot in May 8th Primary Election" by Crawford F. Parker, Secretary of State of Indiana.

2. Said motion relies upon the finding of the Commission as all facts alleged and the conclusion of the Commission as final and conclusive, whereas the purpose of the Complaint filed herein is to review the conclusion of the Federal Communications Commission. Reference, in said motion to dismiss, to the proceedings before the Honorable John P. Barnes, Chief Judge of the United States District Court, Northern District of Illinois, Eastern Division, does not refer to any allegation of the complaint or prayer of the complaint filed in this Court.

3. The said motion to dismiss the complaint of your petitioner in this Court is not predicated upon any defect in said complaint, but purely upon the issues raised by the said complaint, which could only be heard by this Court by answer.

4. The argument in support of said petition relies solely upon the fact that the petitioner is asking for equal time after the Nominating Convention and the Election is over and that it is accordingly a moot question. As a matter of fact, the Complaint does not ask for the relief alleged in the motion to dismiss, but merely asks for a declaratory judgment that the petitioner was a legally qualified candidate for President of the United States according to the Communications Act of 1934 as Amended, Section 315, U.S. Code 47.

5. That the motion to dismiss does not allege any defects in the petition filed herein, but alleges only such matters as should be filed in an Answer to the Petition in order to join issue.

6. Your petitioner requests the Court to grant him the privilege of arguing the motion to dismiss orally, and that it be set down for hearing at an early date, and that the said motion to dismiss the complaint be disallowed.

Respectfully submitted,

/s/ Robert A. Kahn,

Robert A. Kahn, Counsel for
Lar Daly, Petitioner
134 So. LaSalle Street
Chicago 3, Illinois

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois
Thursday, March 7, 1957

Before
Hon. Philip J. Finnegan, Circuit Judge
Hon. H. Nathan Swaim, Circuit Judge

Lar Daly, Petitioner, vs. United States of America, Respondent, and Federal Communications Commission, Intervenor-Respondent.	Petition for Review of an order of the Federal Communications Commission.

No. 11946

This matter comes before the Court on the motion of respondents herein to dismiss this petition for review of an order of the Federal Communications Commission on the grounds that petitioner has alleged no justiciable case.

or controversy, and the case is accordingly moot; and the answer of petitioner to said motion and the emergency motion of petitioner for extension of time for filing of appendix and brief of petitioner.

On consideration whereof, it is ordered and adjudged by this Court that the said motion of respondents to dismiss be granted; and

It is further ordered and adjudged by this Court that this petition of Lar Daly for review of an order of the Federal Communications Commission entered therein on October 31, 1956 be, and the same is hereby, Dismissed.

It is further ordered by the Court that the emergency motion for extension of time for filing of appendix and brief of petitioner be denied.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LAR DALY, Petitioner, vs. UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION, Respondents.	Civil Action No. 11946

PETITION FOR REHEARING.

Lar Daly, Petitioner herein, respectfully moves this Court that the order of this Court, dated March 7, 1957, granting Respondents Motion to Dismiss, of February 21, 1957, and dismissing Petitioner's Petition for Review, of December 28, 1956, be vacated on the grounds that Petitioner does have a justiciable case or controversy and the case is accordingly not moot; and in support of said allegation, Petitioner again requests the Court for oral arguments on the matter.

STATEMENT.

Petitioner's Case Is Not Moot.

This Petition for Rehearing states that Petitioner's case is not moot because the relevant facts are as follows:

1. In Respondents Motion to Dismiss, Page 4, Footnote, paragraph 2, Respondents state: (R. 145-162)[1]

> "The October 3, 1956 Complaint could not have been considered as a second request for reconsideration of the earlier rulings (R. 118-119) because it was not filed within 30 days of the Commission's refusal, on May 3, 1956, (R. 142) to reconsider its April 11, 1956 opinion (R. 118-119). See Communications Act, Section 405, 47 U.S.C. 405.

Petitioner points out to the Court that in his Formal Complaint to the Federal Communications (the Commission), Commission of October 3, 1956 (R. 145-162) on Page 8, paragraph 3, he states:

> "Complainant states that this formal complaint contains a great deal of new material matter upon the same cause of action, as outlined in Complainant's informal complaint of April 5, 1956."

That on the same Page 8, paragraph 2, Petitioner states:

> "Complainant, availing himself of the "Resubmission, 6 months' rule", as stated in Section 1.574 of "Recapitulation—Part 1—Practice and Procedure, Chapter 1, Title 47 [Telecommunication)", recapitulated as of December 1, 1955, now files this formal complaint under Title II of the Communications Act of 1934, as amended.

Petitioner wishes to point out to the Court that the term "Title II" was a typographical error, and should have appeared as "Title III". The Commission, in its Directive of October 31, 1956 against Petitioner (R. 185, paragraph 2), cites this error against Petitioner.

Petitioner directs the Court's attention to the fact that the Commission accepted his Formal Complaint of October

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[1] References to "R", are to the Record filed with this Court by the Commission.

3, 1956 as valid in form and substance, and as such, must have considered it as a "continuing cause of action" of his Informal Complaint of April 5, 1956. Petitioner complied with the Commission's own Rules and Regulations in the matter, by specifically stating that the Formal Complaint was "upon the same cause of action", as his April 5, 1956 Informal Complaint.

Petitioner states to the Court that his Informal Complaint and his Formal Complaint are one and inseparable, and that an examination of the Record, as certified to this Court by the Commission itself, will show that, in justice and common sense, both of Petitioner's Complaints are one and the same cause of action, and as incapable of separation as would be the body from the soul in this life.

Petitioner points out that the Commission forwarded copies of his October 3, 1956 Formal Complaint to the four Television and Radio networks in question (R. 163-164-165-166), and asked them to submit their comments on same as promptly as possible. Various notations of Commission Staff personnel also appear on the Commission's letters to the networks. The Commission received replies from the four networks between the dates of October 15-19, 1956, which are remarkable for their length and detail, if the matter was supposedly one of being moot and, therefore, academic (R. 167-179). The Commission also acknowledged the four networks' replies (R. 180-181-182-183). All four Commission letters to the networks were mailed on October 5, 1956, and the networks' replies were all made between the dates of October 15-19, 1956, which seems hardly coincidental, and suggests collusion and cooperation among the networks in their replies to the Commission.

Petitioner points out to the Court that the Commission, by its own action, in seeking the opinions of four private

business concerns; considering the Formal Complaint among its own staff personnel; adjudicating the matter; and then taking more than two pages of typewritten words to explain its October 31, 1956 Directive against Petitioner (R. 184-185-186), certainly went to a lot of trouble to dispose of a matter that the Commission, in its Motion to Dismiss of February 21, 1957, states is "accordingly moot".

Petitioner states to the Court, "Why did not the Commission refuse to accept his October 3, 1956 Formal Complaint, in the first place, and return it to him with a simple ruling that his case was moot, instead of seeking the opinions of four private business interests?". The same four private business interests had also given their opinions, or more properly "excuses", to the Commission before its April 11, 1956 Directive was issued against Petitioner (R. 118-119) and (R. 100) (R. 101-102-103) (R. 112-113) and (R. 121-122-123-124-125-126-127-128). The Commission's requests to the four private business concerns are contained in (R. 86-87-88-89), made on April 5, 1956.

Petitioner points out to the Court that the four networks, in their replies, deliberately withheld knowledge from the Commission that Petitioner, after exhaustive inquiries by the four networks, had been confirmed as a "legally qualified candidate" by the duly constituted authority of the sovereign State of Illinois. All four networks in their replies, three of which were again coincidentally made on April 9, 1956 and one on April 11, 1956, to the Commission's April 5, 1956 request, stated to the Commission that one of the prime reasons they had refused Petitioner's requests for "free and equal time", made to all four networks' Presidents by Petitioner on March 5, 1956. (R. 37-38), was because of a letter written by Petitioner to the Illinois Secretary of State on February 21,

1956 (R. 34), purportedly asking that his name be withdrawn as a candidate for President of the United States, on the Republican ticket, for the April 10, 1956 Illinois Primary Election.

Petitioner points out to the Court that he wrote the said letter 24 days after January 28, 1956, the last day to legally withdraw from the April 10, 1956 Illinois Presidential Primary Election, and 13 days after February 8, 1956, the day on which the Illinois State Electoral Board adjourned, after certifying the names of all legally qualified candidates to 102 County Clerks of Illinois, for the April 10, 1956 Primary Election. Petitioner points out to the Court that the Illinois Secretary of State, in a letter to Petitioner of February 24, 1956 (R. 35) advised Petitioner that it was not only legally, but practically and absolutely impossible, to decertify himself or be decertified as a legally qualified candidate, after February 8, 1956, as the Illinois State Electoral Board having certified and adjourned, no provision was contained in Illinois Law for reconvening said Board.

Petitioner points out to the Court that four of its six members, as of December 28, 1956, the date on which Petitioner's Petition for Review was filed, were residents of Illinois, acquainted with the Election of Laws of Illinois, and having particular knowledge of filing and withdrawal dates and the date of certification of candidates, especially as pertaining to candidates for state-wide offices and the Illinois Presidential Preferential Primary, by the Illinois State Electoral Board.

Petitioner points out to the Court that the four networks, knowing of the February 24, 1956 letter from the Illinois Secretary of State to Petitioner (R. 35), deliberately withheld knowledge of same from the Commission, in their replies of April 9-11, 1956, to the Commission's April 5,

1956 request. Petitioner does not have definite knowledge that the Commission knew of the February 24, 1956 letter from the Illinois Secretary of State to Petitioner, the same time as did the four networks, which would be sometime between March 8-12, 1956 (R. 39-42). However, Petitioner points out that the Commission, from a letter received by it from the Illinois Secretary of State on April 9, 1956 (R. 97-98) must have known that, according to Illinois law, and in line with its own Rules and Regulations as to the definition of a "legally qualified candidate"; Petitioner possessed the requirements entitling him to be declared a legally qualified candidate.

Petitioner points out to the Court that on March 14, 1956 (R. 44-45—clear copy of same R. 106-107) he explained to one of the four networks, in detail, the political reason behind his purported withdrawal letter to the Illinois Secretary of State, of February 21, 1956. The other three networks were told by Petitioner in letters of March 21, 1956 (R. 50, paragraph 4); March 31, 1956 (R. 72, paragraph 4); and March 31, 1956 (R. 82, paragraph 2) how they could satisfactorily ascertain for themselves the reason for Petitioner's purported withdrawal letter to the Illinois Secretary of State, of February 21, 1956.

Petitioner does, however, point out to the Court that the Commission definitely knew on April 4, 1956 (R. 94) of the February 24, 1956 letter of reply from the Illinois Secretary of State to Petitioner, because on April 4, 1956, the Commission received Petitioner's Informal Complaint (R. 1-5), and on (R. 4, paragraph 6) Petitioner states that he enclosed all original correspondence explaining his February 21, 1956 purported withdrawal letter to the four networks, for the Commission's examination.

2. Petitioner further alleges that his case is not moot because of the illegal and unjust ruling against Petitioner by the Commission on April 11, 1956, as cited in Respondents' Motion to Dismiss of February 21, 1957 (page 2, quotation of paragraph 2) and (R. 118, last paragraph), wherein the Commission states that Petitioner failed "to make a showing that he was a legally qualified candidate." Petitioner states that he did show the Commission, beyond all doubt, that he was a legally qualified candidate according to the Commission's own Rules and Regulations. Further, Petitioner states that the Commission, by its own admission in the Record which it certified to this Court, (R. 35-95) knew, no later than April 6, 1956, five days before it ruled against Petitioner on April 11, 1956, that Petitioner had been confirmed to the Commission as a legally qualified candidate for President of the United States, by the duly constituted authorities of the States of Illinois and Indiana, the supreme arbiters of the matter in question, according to accepted Federal Constitutional Law.

3. Respondent's Motion to Dismiss, (page 3, para. 1, lines 4, 5) states that:

> "No judicial review of the Commission's April 11, 1956, and May 3, 1956 actions were sought by petitioner."

Petitioner states that his April 5, 1956 appeal to the Commission was admittedly in the nature of an "Informal Complaint", and that he had at least 6 months from the date of April 11, 1956 to avail himself of the "Resubmission, 6 months rule", according to the Commission's Rules and Regulations, in which to file a "Formal Complaint", based on the same cause of action as that of April 5, 1956. Petitioner did file a "Formal Complaint" with the Commission on October 3, 1956, which was accepted as valid and

within the 6 month filing period. Hence, Petitioner, knowing that as of October 3, 1956, he had not as yet finally exhausted his administrative remedy before the Commission, had no reason to seek a judicial review of the Commission's April 11, 1956, and May 3, 1956 actions against him.

4. Respondents Motion to Dismiss (page 3, para. 2) cites Petitioner's action before Chief Judge John P. Barnes of the United States District Court, Northern District of Illinois Eastern Division, in support of their contention that Petitioner's cause is moot. Petitioner points out that said action was taken as of right by an individual American citizen, who believed that he had been denied his rights under Federal Law through an Act of Congress, by four private business corporations, viz., the four Radio and Television networks, by their failure to comply with the provisions of the Communications Act of 1934, as amended, U.S. Code 47, which grants free and equal time to a legally qualified candidate to reply to an opponent who had been granted free television and radio time by use of the facilities of the four networks. Naturally, the United States of America or the Commission were not named as parties in the action, as they had no direct material interest in the matter. Petitioner, in a last desperate attempt to secure the television and radio time he believed was his legal and rightful due, before the opening of the 1956 Republican National Convention in San Francisco, Calif. on August 21, 1956, began the action before Judge Barnes on July 16, 1956. Judge Barnes, after a considerate and sympathetic hearing of the issue, denied Petitioner's request for a Declaratory Judgment against the four networks, mainly on the ground that Petitioner, having not exhausted his administrative remedy, the Court lacked jurisdiction in the matter.

5. Petitioner points out that in Respondent's Motion to Dismiss (page 3, para. 3, line 2), Respondent uses the four words in sequence, "again requesting a ruling". This is obviously an inadvertent, but implied, admission that Petitioner's October 3, 1956 Formal Complaint, and his April 5, 1956 Informal Complaint, are one and the same inseparable cause of action. Petitioner points out to the Court again, that, in Respondent's Motion to Dismiss (page 4, footnote, second para.), Respondents seek to declare Petitioner's complaints as two separate requests, and therefore, not of the same cause of action. Respondents also fail to state in their Motion to Dismiss (page 3, para. 3) that the authenticated certified documents from the States of Illinois, Indiana and Montana, certifying that Petitioner was a legally qualified candidate, were so authenticated on February 8, April 3, and May 2, 1956, respectively.

That the Commission was informed of Petitioner's Illinois February 8, 1956, and Petitioner's Indiana April 3, 1956 certification, on or before April 6, 1956.

That the Commission knew, beyond all doubt, that Petitioner met the requirements of its own Rules and Regulations as to what constitutes a "legally qualified candidate", according to Sections 3.120 (Radio) and Section 3.657 (Television), especially as applied to the "meeting the qualifications of the applicable laws" definition. Petitioner avers, and Respondents cannot deny, that "the applicable laws" mean the Election Laws of the various sovereign States of this American Union, as they are interpreted and defined by the duly constituted authorities of said sovereign States.

Nowhere, in Respondents Motion to Dismiss, (page 3, para. 3) does the Commission challenge the validity or authenticity of Petitioner's certification as a legally quali-

fied candidate by the sovereign States of Illinois, Indiana and Montana.

6. In Respondents Motion to Dismiss (page 4, para. 1, lines 7, 8, 9), it states:

> "It was also pointed out that any 'new material' which petitioner might have in his possession had not been previously submitted to the Commission for its consideration."

Petitioner points out to the Court that the "new material" to which Respondents refer was principally Petitioner's declaration to the Commission, made in his Formal Complaint of October 3, 1956, that he had in his possession the authenticated documents from the States of Illinois, Indiana and Montana, which certified Petitioner as a legally qualified candidate, before the date of April 11, 1956, in the States of Illinois and Indiana. This supposed "new material" to which Respondents refer was really not new at all to the Commission, because the Commission investigated Petitioner's claim to being a legally qualified candidate, made on April 5, 1956 in his Informal Complaint to the Commission, by sending telegrams to the Secretaries of State of Illinois and Indiana on April 5, 1956 (R. 90-91).

The replies which the Commission received from the Secretaries of State of Illinois and Indiana (R. 95-97-98), along with copy of the Illinois' Secretary of State letter to Petitioner of February 24, 1956, (R. 35) which said original letter was given to the Commission on April 4, 1956 for the Commission's examination, constituted indisputable proof that the Commission knew, on or before April 4, 1956, and certainly no later than April 6, 1956, that Petitioner was a legally qualified candidate beyond all possibility of doubt.

Yet, in spite of such definite knowledge, the Commission, on April 11, 1956, refused to declare Petitioner a legally qualified candidate as required by law. Instead, the Commission, in a parrot-like repetition of the excuses made to the Commission and Petitioner, by four private business concerns, viz., the four Television and Radio networks, issued its April 11, 1956 ruling against Petitioner (R. 118-119), employing language which in its wording and phrasing was almost identical as that made in the replies of the four networks to the Commission's request for their opinions on Petitioner's April 5, 1956 appeal to the Commission (R. 100) (R. 101-102-103) (R. 112-113) and (R. 121-122-123-124-125-126-127-128).

7. In Respondent's Motion to Dismiss (page 5, para. 1, beginning line 2), it states:

> "We believe it clear that the controversy sought to be raised by the petition for review is moot, and petitioner in seeking review of the Commission's ruling of October 31, 1956, and of his status as a candidate for nomination as Republican candidate for President prior to August 22, 1956, is merely seeking an advisory opinion upon an abstract question of law.[4]
>
> [4] Footnote on page 5—To the extent that the petition for review can be viewed as a request for a declaratory ruling, it must fail since, for the reasons given in the text, there is no actual controversy presently in existence. See *Maryland Casualty Company* v. *Pacific Coal and Oil Co.*, 312 U.S. 270; *Selected Products Corp.* v. *Humphreys et al.*, 86 F. 2d. 821 (C.A.); *Stone* v. *Christensen*, 36 F. Supp. 739 (D.C. Oregon)

Petitioner states to the Court that the two principal issues embodied in his Petition for Review are ones of basic Federal Constitutional Law, viz., the rights of the sovereign State of this Union as guaranteed by Article X of the Bill of Rights in the Constitution of the United States; and the

inalienable and constitutional right of an American citizen to avail himself of, and be accorded the rights guaranteed by the Constitution of the United States, as defined, implied and inferred by the very foundational concept of the Supreme law of this Republic, viz., "Equal Justice Under Law."

Petitioner states to the Court that his cause in upholding the rights of the sovereign States of this Union, and his efforts to secure his Constitutional rights as an American citizen, is far more than the "mere seeking of an advisory opinion upon an abstract question of law."

Those are the basic and fundamental issues involved in this case, and Respondents, by seeking to avoid the issue with pleadings and assertions that the matter is moot and academic, are deliberately misstating the obviously relevant facts. Petitioner states that the cases cited in Respondents Footnote to page 5 of their Motion to Dismiss have absolutely no relevancy or materiality to the Constitutional nature of Petitioner's case.

8. In Respondents Motion to Dismiss (page 5, para. 2, beginning sixth line from the bottom of paragraph), it states:

> "Therefore, the demand for equal time being necessarily the gravamen of petitioner's petition for review of any Commission action, the controversy is moot and the petition must be dismissed. See *City of Atlanta, Ga.* v. *National Bituminous Coal Commission,* 69 App. D.C. 115, 99 F.2d 348; *Evans* v. *Federal Communications Commission,* 72 App. D.C. 159, 113 F. 2d 166.

Petitioner most emphatically points out to the Court that "the demand for equal time is necessarily the gravamen of petitioner's petition for review" is absolutely inaccurate and at variance with the facts of Petitioner's Petition for Review. Nowhere in the 5 points of his prayer for relief

does Petitioner ask this Court to order the Commission to direct the four Television and Radio networks to give him any equal time. Respondents apparently have deliberately sought to mislead the Court as to the true facts and nature of Petitioner's prayer for relief, as contained on pages 4 and 5 of Petitioner's Petition for Review, filed in this Court on December 28, 1956. In Point 4 of his prayer for relief, Petitioner asks for:

> "A Declaratory Judgment by this Court that the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner were unjustified and invalid in their entirety."

In Point 5 of his prayer for relief, Petitioner asks for:

> "An Order, Ruling or Decree by this Court setting aside and suspending the Directives of the Federal Communications Commission of April 11, 1956 and October 31, 1956 against Petitioner; and directing the Federal Communications Commission to enter an order in accordance with the Declaratory Judgment of this Court."

It cannot logically or sensibly be construed from the language and intent of points 4 and 5 of Petitioner's Petition for Review that he is asking the Court to secure him free Television and Radio time, or that he is asking the Court to direct the Commission to secure him the time. Petitioner is asking the Court to uphold and confirm the rulings of the duly constituted authorities of the sovereign States of Illinois, Indiana and Montana that he was a legally qualified candidate for President of the United States, according to the "applicable laws of their various states", and that such knowledge was possessed fully by the Commission on or before April 11, 1956, the date of its original ruling against Petitioner.

Points 1, 2 and 3 of Petitioner's prayer for relief in his Petition for Review ask the Court to affirm the actions

of the sovereign States in the matter, and Points 4 and 5 of the same prayer for relief ask the Court to declare that the Commission's rulings of April 11, 1956, and October 31, 1956 were unjustified and invalid in their entirety, and order the Commission to now enter a Directive or Order in the matter in accordance with the Court's Declaratory Judgment.

9. In answer to the allegations contained on Page 5, last para., and page 6, of Respondents Motion to Dismiss, Petitioner states that, in view of his not asking this Court for the same relief in his Petition for Review as that asked of the Commission in his Formal Complaint of October 3, 1956, his present appeal, as represented by his Petition for Review, is not moot.

STATEMENT.

Petitioner Has Alleged A Justiciable Case Or Controversy.

This Petition for Rehearing states that Petitioner has alleged a justiciable case or controversy, because the relevant facts are as follows:

1. In Respondents Motion to Dismiss (page 2, para. 2, Quotation, beginning line 4, 5 and 6) it states:

> "that although you qualified in Illinois to have your name on the ballot in that state's Republican Primary."

Petitioner points out to the Court that by the above words, Respondents concede that the Commission admits that Petitioner definitely was a legally qualified candidate in the State of Illinois on January 23, 1956, the day on which Petitioner filed his Petition as a Republican candidate for President of the United States, (R. 17) for the April 10, 1956 Illinois Primary Election, with the Illinois Secretary of State; and that he was so certified as a legally qualified

candidate, beyond all doubt, by the Illinois State Electoral Board, the unquestioned duly constituted authority, on February 8, 1956 (R. 35, para. 3) and (Exhibit to Petitioner's Petition for Review, filed in this Court on December 28, 1956).

Petitioner emphatically points out to the Court that under Illinois Election Law, once an candidate is certified as a legally qualified candidate by the Illinois State Electoral Board, and the Board adjourns, he cannot decertify or dequalify himself of his own volition; and neither can he be decertified or dequalified by any individual or agency, as no provision is made in Illinois Election Law for the Board to reconvene (R. 35). The reason for such ruling is that there must be an absolute deadline in which the Illinois Secretary of State can let the County Clerks of Illinois know just who the names of the legally qualified candidates are at the final deadline date, so that the County Clerks can begin preparations for the printing of the ballots for the Primary or Election in their various Counties, and the early providing of such ballots for absentee voters who will be out of their home Counties or the State on Primary or Election day, and also for the mailing out of ballots for the armed forces personnel, especially those stationed outside of Illinois and the continental limits of the United States of America. This is explained to Respondents by the Illinois Secretary of State in (R. 35). If there was no absolute deadline limit to the filing and withdrawal strategems of political candidates, actual makeup of the ballots would be impossible and elections in Illinois could not be properly, or even haphazardly conducted.

2. In Respondents Motion to Dismiss (page 2, para. 2, Quotation, beginning line 9, 10) it states:

> "that while you claim that you are or will be qualified in states other than Illinois,"

Petitioner emphatically points out to the Court that in his original Informal Complaint to the Commission, (R. 1, para. 3), and which the Commission admits receiving on April 4, 1956 (R. 94), he stated that he was certified as a legally qualified candidate in the State of Indiana, for President of the United States on the Republican ticket, for the Indiana Primary Election of May 8, 1956.

The Commission, on April 5, 1956, investigated Petitioner's claim to his Indiana certification by sending a telegram to the Indiana Secretary of State, asking if Petitioner was a legally qualified candidate (R. 91).

The Indiana Secretary of State replied to the Commission (R. 95), by telegram, dated April 6, 1956, verbatim copy of which is as follows:

WESTERN UNION

April 6, 1956

Mary Jane Morris,
Federal Communications Commission
Washington D.C.

LAR DALY HAS FILED HIS DECLARATION AS A REPUBLICAN CANDIDATE FOR PRESIDENT OF THE U.S., HIS NAME WILL APPEAR ON THE OFFICIAL BALLOT IN MAY 8TH. PRIMARY ELECTION

CRAWFORD F. PARKER
SECRETARY OF STATE
OF INDIANA

Petitioner states that he has a full, true and complete copy of the above telegram, provided him by the Indiana Secretary of State on February 19, 1957, at Petitioner's request, for the following reason:

The original Certified Copy of the Record in this case was filed with the Clerk of this Court on February 5, 1957. On February 7, 1957, Petitioner removed the Record from

this Court, with the Clerk's permission, after signing receipt for same. In the Clerk's presence, Petitioner examined the Index and the Record itself. On Page 5, Item 12 of the Index to Record, it states that the above telegram to the Commission from the Indiana Secretary of State was contained in the Record on Page 95. Upon examining the Record to read said telegram, Petitioner discovered that Page 95 was missing from the Record. Petitioner immediately called the Clerk's attention to the omission.

Petitioner filed a Motion to direct the Commission to provide the missing Page 95 so that same would be part of the official certified Record. The Honorable Walter C. Lindley, Circuit Judge of this Court, granted Petitioner's Motion, and ordered the Respondents to provide the missing Page 95 and to be made part of the Record. Petitioner assumes that the Commission complied with the Court's order. Petitioner states to the Court that it is extremely coincidental, that out of 187 Pages, including Certificate of Secretary of the Commission, comprising the certified Record in this case, one of the two pages most important to Petitioner's cause was inadvertently missing, and only fortunately discovered to be missing, when first examined by Petitioner on February 7, 1957, in the presence of the Clerk.

3. In view of the relevant facts, stated in points 1 and 2 heretofore listed, Petitioner avers that he does have a justiciable case or controversy, beyond all possibility of doubt.

ARGUMENT.

PRINCIPAL AND SOLE ISSUE OF PETITIONER'S CASE.

Petitioner respectfully states to this Court that the following proposition is the central and fundamental issue to be decided in this Petition for Rehearing, and also in Petitioner's Petition for Review, viz.:

> **SHALL THE RULINGS OF A FEDERAL REGULATORY AGENCY, APPARENTLY INFLUENCED BY THE OPINIONS OF AFFECTED PRIVATE BUSINESS CONCERNS, SUPERSEDE AND TAKE PRECEDENCE OVER THE DECISIONS AND RIGHTS OF THE SOVEREIGN STATES OF THIS UNION, IN MATTERS PERTAINING TO ELECTIONS HELD WITHIN THE VARIOUS STATES' BORDERS?**

Article X of the Bill of Rights of the Constitution of the United States reads as follows:

> **"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."**

Petitioner avers that it has always been generally accepted, as a basic principle of Federal Constitutional Law, that the States of this Union are supreme in all matters pertaining to Elections held within their state borders.

Consequently, it must logically follow then, that, whenever the duly constituted authority of a sovereign State declares a citizen to be a legally qualified candidate for an election, held within its state borders, such decision is supreme, absolute and final; and all individuals and agencies, whether of a Federal, State, County or local character,

are bound to accept such decision without reservation, and be governed accordingly in any determination having relevancy to such decision.

EXHIBITS OF PETITIONER.

Petitioner submits exhibit marked "Prime Exhibit" for the Court's examination, and avers that its contents are self-explanatory and support Petitioner's cause of action.

Exhibit marked "No. 1" is self-explanatory and supports Petitioner's cause of action. All of the other States' Attorneys General who replied to Petitioner's letter of February 27, 1957, naturally, took the position of the Illinois Secretary of State in their replies. The Offices of the Attorneys General of the States of Georgia, Alabama and Indiana are fearlessly expressive within the limitations of their constitutional powers.

Exhibit marked "No. 2" is the Rules and Regulations of the Federal Communications Commission, and known as FCC Primer of September 8, 1954, entitled "Use of Broadcast Facilities by Candidates for Public Office." Petitioner calls the Court's attention to the definition of what constitutes a "legally qualified candidate", (Front-page, third column and page 2, first column); also to the definition of what constitutes a person as a "legally qualified candidate for nomination as the candidate of a party for President or Vice-President of the United States; also Question and Answer No. 18, which supports Petitioner's appeal to the Commission on April 5, 1956, and which was the basis for nation-wide newspaper stories by an "authorized spokesman" for the Commission, on March 1, 1956, that, "so far as he knew, only William F. Knowland could claim free and equal Television and Radio time to reply to Dwight D. Eisenhower's address to the nation on February 29, 1956." It was obvious from that statement that the FCC

"authorized spokesman" did not know, at that time, that Petitioner had already been certified as a legally qualified candidate for President of the United States, on the Republican ticket, for the April 10, 1956 Illinois Primary Election, said certification being made by the Illinois State Electoral Board on February 8, 1956, the same date on which Dwight D. Eisenhower and William F. Knowland had also been certified in Illinois. However, on March 1, 1956, after Dwight D. Eisenhower's address of February 29, 1956, William F. Knowland, formally and publicly, quit the 1956 Republican President race and did not request the free Television and Radio time due him from the networks. William F. Knowland did attempt to have his name removed from the Illinois ballot, but was prevented from doing so because the Illinois State Electoral Board had certified and adjourned on February 8, 1956, and there was no possible way that he could have himself decertified as a "legally qualified candidate."

Exhibit marked "No. 3" is a copy of Hearings held by a Sub-committee of the United States House of Representatives, in March and July, 1956, regarding the operations of the Federal Communications Commission. Petitioner directs the Court's attention to the parts of the Exhibit marked by black lines. These materially support Petitioner's belief that the Commission did not act as a free and independent Federal Agency in its consideration of Petitioner's case, but was greatly influenced by the opinions, and probable dictates, of the four Television and Radio networks.

Exhibit marked "No. 4" is a copy of Hearings held by the Committee on Interstate and Foreign Commerce of the United States Senate, in March, May, June and July, 1956. Petitioner directs the Court's attention to the parts marked by black lines, particularly, Paragraph 3 on Page 2859,

wherein Dr. Frank Stanton, President of Columbia Broadcasting System, in a letter to the Committee dated June 22, 1956, states in effect that Petitioner was entitled to the free and equal Television and Radio time, to reply to Dwight D. Eisenhower's address of February 29, 1956. Further, Petitioner directs the Court's attention to the black-marked lines on Pages 2862 and 2863 of Exhibit 4. This is a statement of Richard S. Salant, Vice-President of Columbia Broadcasting System, made to the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives, in the summer of 1955. In this statement, Mr. Salant declares in effect that, based on past performances, the Federal Communications Commission should have declared Petitioner a "legally qualified candidate in early April of 1956, when the Commission first received Petitioner's appeal on April 4, 1956.

It is also laughable when it is considered how groundless were the Television and Radio networks fears that the 1956 Presidential Primary Elections might be loaded with "no practical limit", and a "great many soapbox orators and publicity seekers", and a "couple of dozen" candidates for President, and a "potentially unlimited" number of candidates for President and Congressman, saturating the networks airwaves, "in whom the public has no interest at all."

In the 1956 Republican President Elections, there were only two candidates running for President in more than one State Presidential Primary Election. They were: Dwight D. Eisenhower and Lar Daly. In Wisconsin, John Chapple of Ashland, Wisconsin, did qualify as a Republican candidate for President against Dwight D. Eisenhower, for the April, 1956 Republican Primary. Mr. Chapple ran in no other state. Though the name of William F. Knowland appeared on the ballot for the Illinois

Republican Primary in April, 1956, Mr. Knowland, on March 1, 1956, publicly declared himself as no longer a bona-fide candidate. On the 1956 Democratic Presidential side, Petitioner believes that only the names of Adlai Stevenson, Estes Kefauver, and a few others appeared on the various States' Democratic Presidential Primary ballots. The networks were very skimpy in giving any free Television and Radio time to the three leading 1956 Democratic Presidential candidates, Adlai Stevenson, Estes Kefauver, and Averill Harriman.

It is significant that of the seven bills in the Senate, and nearly a like number in the House, during the last Session of Congress, which the networks would liked to have seen made into law, none of them were passed by the elected peoples representatives in Congress. This was the result, in spite of all of both the major parties "big-guns" in the Congress, favoring and working for passage for one or more of the bills.

Page 2896 of Exhibit No. 4 is a copy of a letter from Thomas E. Ervin, Vice-President and General Counsel of National Broadcasting Co., to Hon. Warren G. Magnuson, Chairman of the U.S. Senate Committee on Interstate and Foreign Commerce, and is dated August 2, 1956. In the letter, Mr. Ervin voices his fears that "nearly anyone may claim to be a candidate for his party's nomination for high office", and "that a dozen or more candidates could do one or more of two things."

Exhibit No. 5 is a copy of Petitioner's requests to the Presidents of the four networks for free and equal time to answer Dwight D. Eisenhower's addresses of April 16 and August 3, 1956. Petitioner also requested free and equal time to answer Dwight D. Eisenhower's address of April 21, 1956, but has misplaced his copy of same.

Exhibit No. 6 is a copy of Petitioner's pending certification as a legally qualified candidate in the State of Montana, for the June 5, 1956 Montana Primary Election, and is dated April 25, 1956.

Exhibit No. 7 is a letter to Dwight D. Eisenhower from Petitioner and a reply to same. It shows that Petitioner's opponent, Dwight D. Eisenhower, assisted greatly in securing Petitioner Hotel Headquarters space in San Francisco for his Convention Campaign Headquarters. Also, the correspondence with Mr. Ted Dalton, of the Republican National Committee Housing Bureau, shows that he was accepted as a bonafide and actively campaigning candidate for the 1956 Republican Presidential nomination by the supreme managing Committee of his party; and also, demolishes the excuses of the Commission and the networks that that they were in doubt as to whether Petitioner was a "bona-fide" candidate.

Exhibit No. 8 contains copies of letters and telegrams to Douglas MacArthur and William E. Jenner from Petitioner, with replies to same; also copies of news stories that Petitioner definitely would be a serious and campaigning candidate for the 1956 Republican Presidential nomination if MacArthur or Jenner refused to run in Illinois. The material in this Exhibit demolishes the Commission's and the networks excuses that I seemed to be supporting MacArthur or Jenner for President.

Exhibit No. 9 contains copies of news stories of my purported "withdrawal" from The Illinois Republican Presidential race, made on February 21, 1956, and shows conclusively that the action was merely a successful political strategem to advance my Presidential candidacy by securing newspaper publicity, it being known to Petitioner that he could not possibly have his name removed from the Illinois ballot, or get himself decertified as a "legally qualified candidate", after February 8, 1956. This Exhibit also

contains news stories that William F. Knowland tried to withdraw from the Illinois race, after February 8, 1956 but could not do so under Illinois law. Also, the Exhibit contains a news story from Broadcasting-Telecasting magazine, admittedly "the Bible of the Communications Industry", which shows that the Illinois Secretary of State declared Petitioner was within his legal rights in running for Governor as well as President in the same Illinois Primary Election, as no conflict of offices was involved. This Exhibit demolishes the Commission's and the networks excuses, cited against Petitioner's not being a "legally qualified candidate as contained in (R. 118-119).

Exhibit No. 9 is a copy of story from Broadcasting-Telecasting magazine of March 5, 1956. It deals with salient features of Dwight D. Eisenhower's address of February 29, 1956, which the Commission definitely considered political in nature, and shows that the Commission, by inference and implication, included Petitioner among those eligible to the free and equal time to reply to Dwight D. Eisenhower's address of February 29, 1956, due to Petitioner's having been certified as a legally qualified candidate in Illinois on February 8, 1956, which fact appears to have been unknown to the Commission on February 29, 1956.

CONCLUSION.

For, the foregoing good and substantial reasons, this Petition for Rehearing should be granted, and Respondents Motion to Dismiss, granted by this Court on March 7, 1957, should be vacated.

Respectfully submitted,

ROBERT A. KAHN
Attorney for Petitioner, Lar Daly

134 South LaSalle Street
Chicago 43, Illinois
ANdover 3-2283

APPENDIX.

PRIME EXHIBIT.

March 15, 1957

Attorney General Latham Castle
Capitol Bldg.
Springfield, Ill.

Mr. Attorney General:

I am engaged in court action against the Federal Communications Commission in the United States Court of Appeals in Chicago. A copy of my Petition for Review is enclosed. Also, a copy of a letter sent to every U. S. Senator and Congressman. I seek a Declaratory Judgment from the Court that I was a legally qualified candidate for President of the United States, on the Republican ticket, for the April 10, 1956 Primary Election. You were a member of the Illinois State Electoral Board, as it was constituted on February 8, 1956. On that day, the Board certified me as a legally qualified candidate to all 102 Illinois County Clerks.

My whole cause before the Court is based on the principle of State Rights, especially as they pertain to the right of the 48 States of this Union to be supreme in all matters pertaining to Elections, held within their state borders. In this cause, I am fighting for the sovereign rights of our own State of Illinois, and the right of one of its duly constituted authorities, viz., the Illinois State Electoral Board, to be preeminent over the rulings of a Federal Regulatory Agency and the opinions of private business concerns, viz., the four major Television and Radio networks, NBC, CBS, ABC and MBS.

My cause is particularly apropos when it is considered that the motto of our own State of Illinois is, "State Sovereignty, National Union." Article X to the Amendments of the Federal Constitution (Bill of Rights) specifically guarantees to the States the right to be supreme in all matters pertaining to Elections and the Franchise.

Enclosed are two copies of a Deposition. I ask that you sign one, have it notarized and return it to me at your earliest possible convenience. I want to present it to the Court to bolster my Petition for Rehearing, which must be filed soon. On March 7, 1957, the Court allowed the FCC's Motion to Dismiss my Petition for Review. My Petition for Rehearing is a final step in the Appeal Court before the case goes to the U. S. Supreme Court on Certiorari.

Copies of my Petition for Review, Congressional Letter, and personal letters similar to this, have been sent to the other four members of the Illinois State Electoral Board, as constituted on February 8, 1956, along with two copies of the Deposition also. They have been asked to sign one copy and return it to me.

To you personally, as Attorney General of Illinois, and on behalf of the citizens of Illinois, I ask you to enter the case as Intervenor in my behalf. Your action would be just and proper, and a rebuke and protest to the timidity of a Federal Regulatory Agency, which apparently is nothing but a "Servant-Boy" for the Television and Radio networks it is supposed to regulate for the best interests of the American people.

(Letterhead of Latham Castle, Attorney General, State of Illinois)

March 19, 1957

Mr. Lar J. Daly,
844 West Vermont Street,
Chicago 43, Illinois.

Dear Mr. Daly:

With reference to your letter of March 15, 1957, I regret that I can not under my statutory powers apply for Leave on behalf of the State of Illinois to intervene in the litigation brought by you against the Federal Communications Commission, which is now pending in the United States Court of Appeals for the Seventh Circuit as No. 11946

Very truly yours,
/s/ Latham Castle
Attorney General

C
LC:GB:ak

To the Honorable Judges of the
United States Court of Appeals for the Seventh Circuit

The undersigned, being first duly sworn, on oath deposes and says: That on February 8, 1956, he was a member of the Illinois State Electoral Board, the duly constituted authority charged by law with certifying legally qualified candidates to the County Clerks of Illinois, for the Primary Election held on April 10, 1956.

That on the aforementioned date of February 8, 1956, he did concur in certifying the name of Lar (America First) Daly, as a legally qualified candidate for President of the United States, on the Republican ticket, to all

Illinois County Clerks, for printing on the official ballots and voting machines in all Counties of Illinois; that the name of Lar (America First) Daly did appear on all Illinois ballots for said Primary Election and that he was voted for directly by the Illinois electorate on April 10, 1956, for the office of President of the United States, and that the votes he received as the result of said Primary Election are listed in the official tally and canvass of votes, maintained in the office of the Illinois Secretary of State.

That as the result of such certification as a legally qualified candidate on February 8, 1956, Lar (America First) Daly remained and continued as a legally qualified candidate, according to the laws of the sovereign state of Illinois, up to and including the date of the April 10, 1956 Primary Election.

....., Member
Illinois State Electoral Board
as constituted on February 8, 1956

Subscribed to and sworn to before me
this ..... day of March, 1957.

.....
Notary Public

My commission expires .....

March 15, 1957

Attorney General Edwin K. Steers
Capitol Bldg.
Indianapolis, Indiana

Attorney General Steers:

I thank you for your encouraging letter of March 1, 1957. You may remember me for my attempt to file General Douglas MacArthur for President of the United States, on the Indiana ballot, for the General Election of November, 1952. At present, I am engaged in court action against the Federal Communications Commission in the United States Court of Appeals in Chicago. A copy of my Petition for Review is enclosed. Also, a copy of a letter sent to every U. S. Senator and Congressman.

I seek a Declaratory Judgment from the Court that I was a legally qualified candidate for President of the United States, on the Republican ticket, for the May 8, 1956, Indiana Primary Election. On April 3, 1956, the Indiana Secretary of State, as the duly constituted authority under the laws of Indiana, certified me as a legally qualified candidate to all Indiana Circuit Court Clerks, for the May 8, 1956 Primary.

My whole case before the Court is based on the principle of States Rights, especially as they pertain to the right of the 48 States of this Union to be supreme in all matters pertaining to Elections, held within their state borders. In this cause, I am fighting for the sovereign rights of the State of Indiana, the state of my birth and the right of one of its duly constituted authorities, viz., the Secretary of State, to be preeminent over the rulings of a Federal Regulatory Agency and the opinions of private business concerns, viz., the four major Television and Radio networks, NBC, CBS, ABC, and MBS.

On April 6, 1956, in response to a telegram from the Federal Communications Commission, the Indiana Secretary of State replied by wire, stating in effect that Lar Daly was a legally qualified candidate, according to Indiana Law, for the May 8, 1956 Primary Election. Article X of the Amendments to the Federal Constitution (Bill of Rights) specifically guarantees to the States the right to be supreme in all matters pertaining to Elections and the Franchise.

Enclosed are two copies of a Deposition. I ask that you sign one, have it notarized, and return it to me at your earliest possible convenience. I want to present it to the Court to bolster my Petition for Rehearing, which must be filed soon. On March 7, 1957, the Court allowed the FCC's Motion to Dismiss my Petition for Review. My Petition for Rehearing is a final step in the Appeals Court before the case goes to the U. S. Supreme Court on Certiorari.

A copy of my Petition for Review, Congressional Letter, and a personal letter similar to this, has been sent to Lieutenant Governor Crawford F. Parker, who was Secretary of State of Indiana on April 3, 1956, along with two copies of the Deposition. I have asked him to sign one copy and return it to me. Governor Harold Handley also has received copies of all correspondence. On behalf of the citizens of Indiana, I ask you to enter the case as Intervenor in my behalf. It would serve as a protest and rebuke to the timisity of a Federal Regulatory Agency, which apparently is nothing but a "Servant-Boy" for the Television and Radio networks they are supposed to regulate.

Sincerely yours,
Lar Daly

(Letterhead of Edwin K. Steers, Attorney General, State of Indiana)

March 19, 1957

Mr. Lar J. Daly, President
American Stool & Chair Co.
844 West Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

I have received your letter of March 15, 1957, and have carefully read the letter together with the enclosures thereto.

As you know, the office of the Attorney General of the State of Indiana is one created and regulated by statute, prescribed by the Legislature. While it is true that the Attorney General is directed, by statute, to prosecute and defend all suits that may be instituted by or against the State of Indiana, and he is required further to attend to the interests of the State in all actions in which the State is interested in the Supreme Court of this State, the Attorney General of this State cannot interpose himself as an intervenor into an action between a private citizen and an agency of the Federal Government, and especially the Attorney General of the State of Indiana could not intervene in behalf of one of the existing parties to the action.

In addition to the matter of intervention, I could not, acting either as a private citizen or as Attorney General, execute the enclosed affidavit for in neither capacity did I have personal knowledge of the matter therein described. On the other hand, the records of the Secretary of State for the State of Indiana are official and public records of the information sought by the affidavit. I understand that you have already requested and received a certified copy of the Secretary of State's telegrams to you of April 6, 1956.

Certainly nothing from this office could make that certification any more or less official.

I shall remain most happy to be of any assistance to you which might be possible under the law and the circumstances. I am indeed regretful to have not been of more assistance to you in the immediate circumstances.

Very truly yours,
/s/ Edwin K. Steers,
Edwin K. Steers,
Attorney General of Indiana

EKS/slw

To the Honorable Judges of the
United States Court of Appeals for the Seventh Court

The undersigned, being first duly sworn on oath, deposes and says: That on April 3, 1956, he was Attorney General of the State of Indiana and does hold the same office as of this date; that as Attorney General he is empowered by Indiana Law to advise and render opinions to the Indiana Secretary of State, the duly constituted authority, charged by law with certifying the names of all legally qualified candidates to the Circuit Court Clerks of the State of Indiana, for the Primary Election held on May 8, 1956.

That on the aforementioned date of April 3, 1956, he did have knowledge of the certification, by the Indiana Secretary of State, of the name of Lar Daly, as a legally qualified candidate for President of the United States, on the Republican ticket, for the May 8, 1956 Primary Election, to all Indiana Circuit Court Clerks; that the name of Lar Daly did appear on Indiana Counties ballots for said Primary Election; that he was voted for directly by the

Indiana electorate on May 8, 1956 for the office of President of the United States; and that the votes he received as the result of said Primary Election are listed in the official canvass of votes, maintained in the office of the Secretary of State.

That as the result of such certification as a legally qualified candidate by the Indiana Secretary of State on April 3, 1956, Lar Daly remained and continued as a legally qualified candidate, according to the laws of the sovereign State of Indiana, up to and including the date of the May 8, 1956 Primary Election.

.....

Edwin K. Steers, Attorney General
of the State of Indiana
on April 3, 1956, and as of this date.

Subscribed and sworn to before me
a Notary Public this .....
day of March, 1957.

.....

Notary Public

My Commission expires.....

EXHIBIT NO. 1.

Below is exact copy of letter sent to all 48 States' Attorneys' General same date.

Chicago, Illinois
February 27, 1957

Attorney General Eugene Cook
State of Georgia
Capitol Bldg.
Atlanta, Georgia

Mr. Attorney General:

I would like your opinion on the following Constitutional proposition, at your earliest convenience:

The Constitution of the United States of America, Article X of the Amendments to the Constitution, states:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Article I, Section 8 of the Constitution itself states the specific powers which the Congress of the U.S. shall possess. Nowhere in such Section 8 of Article I does the Constitution grant the Congress any powers pertaining to Elections, or any matters relevant thereto.

The authority retained by the constituent States prevails over a broad field of government, including all powers not explicitly or implicitly vested in the central authority by the Constitution and excepting those powers expressly forbidden the States by the Constitution.

Among the powers retained by the States are: "the qualified control of election and suffrage." So far as I know, no competent authority has ever denied or challenged the right of the sovereign states to be supreme in all matters pertaining to Elections within their State borders.

Now, therefore, if such be the Constitutional fact of the matter, then the duly constituted authority of a sovereign state also possesses the supreme right to say who is, and who is not, a certified legally qualified candidate for any election held within its state borders.

It must follow, logically, then, and as a matter of basic common sense, that all individuals and agencies, private or public, whether Federal, State, County or local, must accept such decision as absolute, final, and non-arguable; and must be guided and governed accordingly, particularly if presented with the problem of determining whether an American citizen is, or is not, "a legally qualified

candidate", within the meaning of Sec. 315 of the Communications Act of 1934, as amended, U.S. Code 47.

I ask you, Mr. Attorney General, do you agree with me, or not, that the sovereign States of this Union, under Federal Constitutional Law, are the sole and supreme authority as to who is, and who is not, "a legally qualified candidate", for any election held within its State borders?

Respectfully yours,

.....

LAR DALY
844 West Vermont Street
Chicago 43, Illinois

THE DEPARTMENT OF LAW
STATE OF GEORGIA
ATLANTA

March 5, 1957

(State of Georgia Seal)
Eugene Cook, The Attorney General

Mr. Lar Daly, President
American Stool & Chair Co.
844 West Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

I am pleased to acknowledge your letter to the Attorney General which has been referred to me due to his engagement in the trial of cases.

The State Department of Law can only give an opinion to the Governor and to the heads of the various departments of the State on matters in which the State is a party at interest, and therefore I cannot give you an opinion in a private capacity.

I am pleased to give you my personal and unofficial views relative to the elective franchise, which are that the elective franchise is a power sovereign in the State and which has not been delegated under constitutional processes to the Federal Government, and, of course, you are familiar with the provision of the Constitution of the United States, which is as follows:

> "Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

With kindest regards, I am

Yours sincerely,
/s/ A. J. Hartley,
A. J. Hartley,
Asst. Atty. General.

AJH/stg

(Letterhead of)

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
MONTGOMERY 4, ALABAMA

March 4, 1957

(Alabama Great Seal)
Mr. Lar Daly
American Stool and Chair Company
844 Vermont Street
Chicago 43, Illinois

Dear Mr. Daly:

This acknowledges receipt of your letter under date of February 26, 1957, and the contents therein have been carefully noted.

This office is prohibited by law from rendering official opinions to private individuals.

However, the legal points raised in your letter have been duly considered, and I certainly want to tell you that I am personally in accord with the conclusion that you have reached. I feel sure that the Attorney General, Mr. Patterson, would also concur in your expressions.

Both Mr. Patterson and myself recently testified before the House Judiciary Committee in Washington regarding the so-called civil rights legislation which is to come up at this session of Congress. We both made expressions in bitter opposition to this proposed legislation, and I believe both of us pointed out that the control of elections, the qualification of registered voters, and the requirements of legally qualified candidates have traditionally been vested in the states. I feel very strongly that the proposed legislation, at least, as it is now drafted, is unconstitutional.

This office appreciates your very interesting letter and many of us here in the South wish you could get your thoughts across to your United States Senator Paul Douglas.

Very truly yours,
John Patterson
Attorney General
By—
/s/ MacDonald Gallion
MacDonald Gallion
Senior Assistant Attorney
General

MacG/ar